

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES POWERS, et al.)
)
v.) NO. 3-11-1209
) JUDGE CAMPBELL
COTTRELL, INC.)

ORDER

Pending before the Court is Plaintiffs' Motion for Award of Attorneys' Fees (Docket No. 40). Plaintiffs' Motion is GRANTED in part and DENIED in part.

This Court granted Plaintiffs' Motion to Remand on April 23, 2012, and remanded this action to the Circuit Court for Rutherford County, Tennessee. Docket No. 37. When remanding a case after removal, the Court may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. 28 U.S.C. 1447(c). The Court retains considerable discretion in fixing a fee award, but such awards are permitted only where the removing party lacked an objectively reasonable basis for seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005); *Warthman v. Genoa Township Bd. of Trustees*, 549 F.3d 1055, 1059 (6th Cir. 2008).

As noted at the time of this Court's remand, this action was originally filed in September of 2006, was removed to this Court in November of 2006, was remanded to state court in January of 2007, and had been proceeding more than four years in the state court when Defendant Cottrell attempted again to remove the action to this Court. For the reasons stated in the Court's Memorandum on the Motion to Remand (Docket No. 38), the Court, in its discretion, finds that Defendant's attempted removal was not objectively reasonable under the facts and circumstances.

Accordingly, Plaintiffs' Motion for Award of Attorneys' Fees is granted in part. The Affidavit of Attorney R. Gritton (Docket No. 40-2) is not signed and is therefore not considered by the Court. The Court awards attorneys' fees against the Defendants in the total amount of \$8,000.00, representing \$4200.00 for the time of Mr. Blotevogel and \$3800.00 for the time of Mr. Wendler.¹

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

¹ Plaintiffs' Motion (Docket No. 40) asserts that the amount for Mr. Wendler's time is \$3810.00, but Mr. Wendler's Affidavit (Docket No. 40-3) indicates that he expended ten hours of time at a rate of \$380.00 per hour, which totals \$3800.00.